



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/169100

PRELIMINARY RECITALS

Pursuant to a petition filed September 29, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Manitowoc County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on October 28, 2015, at Manitowoc, Wisconsin.

The issues for determination are (1) whether the agency correctly established a FoodShare (FS) overpayment under claim number [REDACTED] in the amount of \$1,324 for the period of May 8, 2014 to October 31, 2014; and (2) whether the agency correctly established a FS overpayment under claim number [REDACTED] in the amount of \$2,013 for the period of December 1, 2014 to June 30, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

█

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Laurie Garceau

Manitowoc County Department of Human Services
3733 Dewey Street
Manitowoc, WI 54221-1177

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Manitowoc County. The petitioner's household size between May 8, 2014 and October 31, 2014 is three. This consists of the

petitioner and her two children. Beginning December 1, 2014 the petitioner's boyfriend was living with her. This increased the household size to 4. The household size continued to be four through the remaining overpayment period.

2. On July 23, 2015 the agency sent the petitioner two notices of FoodShare (FS) overpayments. The first notice was for claim number [REDACTED]. This notice stated that the petitioner was overpaid \$1,324 in FS benefits for the period of May 8, 2014 to October 31, 2014. The second notice was for claim number [REDACTED]. This notice stated that the petitioner was overpaid \$2,013 in FS benefits for the period of December 1, 2014 to June 30, 2015.
3. In April 2014 the petitioner's boyfriend, and father of her children, moved from her address to a different address in Manitowoc. At the end of May 2014 he moved from this new Manitowoc address to Sheboygan. In June 2014 he moved from Sheboygan to Random Lake. In September 2014 he moved from Random Lake to a different address in Sheboygan. The petitioner's boyfriend was not living in her home between May 8, 2014 and October 31, 2014.
4. The petitioner's boyfriend moved back into the petitioner's home effective December 1, 2014. He remained in her home through June 30, 2015.
5. From December 1, 2014 through May 30, 2015 the petitioner received \$275 in monthly FS benefits. In June 2015 the petitioner received a monthly FS benefit of \$363.
6. From December 1, 2014 through May 30, 2015 the petitioner's monthly gross earned income was \$1,720. In December 2014 the petitioner received \$4,954.54 in unearned income. From January 1, 2015 through May 30, 2015 the petitioner received \$4,264.31 in unearned income. Thus, the petitioner's monthly gross income from December 1, 2014 through May 30, 2015 was as follows: \$6,674.54 in December 2014 and \$5,984.31 from January through May 2015.
7. In June 2015 the petitioner's monthly gross income was \$6,508.95, which consists of \$2,244.64 in earned income and \$4,264.31 in unearned income.
8. The petitioner's shelter expenses were less than half of the household's adjusted gross income. Therefore, she was not eligible for the shelter deduction. With the petitioner's boyfriend in her home, the family was not eligible for FS benefits between December 1, 2014 and June 30, 2015.
9. On October 2, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

The Federal regulation concerning FoodShare overpayments requires a State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 *Code of Federal Regulations (CFR)* § 273.18(b), see also *FoodShare Wisconsin Handbook (FSH)*, §7.3.2.

The issue in this case is whether the petitioner's boyfriend was living in her home during the overpayment periods of May 8, 2014 to October 31, 2014 and December 1, 2014 to June 30, 2015. I conclude that the petitioner's boyfriend was not living in her home from May 8, 2014 to October 31, 2014. I further conclude that the petitioner's boyfriend was living in her home from December 1, 2014 to June 30, 2015.

The petitioner submitted a Wisconsin Circuit Court Access printout from family court. The printout shows that between April and October 2014 the petitioner and her boyfriend had an ongoing and active family court case. Throughout the pendency of this case the petitioner's boyfriend kept his address updated with Circuit Court. These updates show that in April 2014 he moved from the petitioner's address to a different address in Manitowoc. At the end of May 2014 he moved from this newer

Manitowoc address to Sheboygan. In June 2014 he moved from Sheboygan to Random Lake. In September 2014 he moved from Random Lake to a different address in Sheboygan. The family court case has no new events or entries between November 2014 and June 15, 2015. This is the time in which the petitioner's boyfriend moved back into the petitioner's home. It follows that when he moved back in with the petitioner, the petitioner was not actively pursuing child support through this family court case.

I further note that the investigator's summary does not provide any specific information with respect to the period from May 8, 2014 through October 30, 2014. The landlord stated that the petitioner and her boyfriend signed a lease on January 15, 2014. This is consistent with the information from family court showing that prior to April 2014 her boyfriend was living with her. The lease was most likely not updated after the boyfriend moved out and the petitioner continued to rent the apartment.

I conclude that the petitioner's boyfriend was living with the petitioner between December 1, 2014 and June 30, 2015. During this time period the petitioner was unable to provide alternative addresses where her boyfriend lived. The petitioner agreed that during this time period her boyfriend received mail at her apartment. The petitioner stated that her boyfriend was gone for three to four months after her daughter's birthday in mid-October. She further testified that they tried to work out their relationship in April 2015. While trying to work out their relationship he stayed with her a week, and then he was gone. Since May 2015 her boyfriend has stayed with her six days total.

The petitioner's testimony with respect to the period between December 1, 2014 and June 30, 2015 is not credible. In May and June 2015 the neighbors were very familiar with the petitioner's boyfriend. The neighbors stated that he was living in the home. One neighbor stated that his Camero was parked in the garage for quite some time. Another neighbor stated that the family takes the boat, which was parked in the driveway, to a river or lake. They use the boyfriend's truck to pull the boat. The boyfriend's vehicles were registered to the petitioner's address. In June 2015 the investigator saw the petitioner's boyfriend leaving her home. The investigator spoke to the boyfriend who said that he had been staying with his grandmother. He said he did not know where his grandmother lived. When asked to provide the grandmother's phone number for verification, he refused, and then became agitated ultimately directing the investigator to get off of his property.

The petitioner does not dispute the overpayment calculations. The only dispute was whether her boyfriend was living with her during the overpayment.

CONCLUSIONS OF LAW

1. The agency incorrectly established a FS overpayment under claim number [REDACTED] in the amount of \$1,324 for the period of May 8, 2014 to October 31, 2014 because the petitioner's boyfriend was not living with her during this period.
2. The agency correctly established a FS overpayment under claim number [REDACTED] in the amount of \$2,013 for the period of December 1, 2014 to June 30, 2015 because the petitioner's boyfriend was living with her during this period.

THEREFORE, it is

ORDERED

That this case is remanded to the agency with instructions to rescind the FS overpayment under claim number [REDACTED]. The agency shall comply with this order within 10 days of the date of decision. This appeal is dismissed in all other respects.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

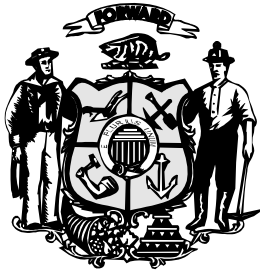
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 11th day of November, 2015

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 11, 2015.

Manitowoc County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability